

SENATE BILL 2045
By Burks

AN ACT to amend Tennessee Code Annotated, Title 33, to enact the "Commitment of Sexually Violent Predators Act of 1998".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, is amended by adding the following as a new Chapter 11:

Section 33-11-101. This chapter shall be known and may be cited as the "Commitment of Sexually Violent Predators Act of 1998".

Section 33-11-102. The general assembly finds that a small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for involuntary treatment pursuant to the treatment act for mentally ill persons defined in Tennessee Code Annotated, Title 33, Chapter 3, Part 6, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under Tennessee Code Annotated, Title 33, Chapter 3, Part 6, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities and those features render them likely to engage in sexually violent behavior. The general assembly further finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure pursuant to the

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treatment act for mentally ill persons defined in Tennessee Code Annotated, Title 33, Chapter 3, Part 6, is inadequate to address the risk these sexually violent predators pose to society. The general assembly further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the treatment act for mentally ill persons defined in Tennessee Code Annotated, Title 33, Chapter 3, Part 6, therefore a civil commitment procedure for the long-term care and treatment of the sexually violent predator is found to be necessary by the general assembly.

Section 33-11-103. As used in this act, unless the context otherwise requires:

(1) "Sexually violent predator" means any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence;

(2) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others;

(3) "Predatory" means acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization;

(4) "Sexually motivated" means that one (1) of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification;

(5) "Sexually violent offenses" means:

(A) Rape of a child as defined in Tennessee Code Annotated, Section 39-13-522 ;

(B) Aggravated rape as defined in Tennessee Code Annotated, Section 39-13-502 ;

(C) Rape as defined in Tennessee Code Annotated, Section 39-13-503;

(D) Aggravated sexual battery as defined in Tennessee Code Annotated, Section 39-13-504;

(E) Aggravated sexual exploitation of a minor as defined in Tennessee Code Annotated, Section 39-17-1004;

(F) Especially aggravated sexual exploitation of a minor as defined in Tennessee Code Annotated, 39-17-1005 ;

(G) Any conviction for a felony offense in effect at any time prior to the effective date of this act that is comparable to a sexually violent offense as defined in this subsection or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection;

(H) An attempt to commit as defined in Tennessee Code Annotated, 39-12-101, a conspiracy to commit as defined in Tennessee Code Annotated, 39-12-103, or solicitation to commit as defined in Tennessee Code Annotated, 39-12-102 , a sexually violent offense as defined in this subsection; or

(I) Any act which either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated;

(6) "Agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of correction, board of paroles and the department of mental health and mental retardation.

Section 33-11-104. (a) When it appears that a person may meet the criteria of a sexually violent predator as defined in Section 33-11-103, the agency with the jurisdiction shall give written notice of such to the district attorney of the county where that person was charged, sixty (60) days prior to:

(1) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

(2) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to Tennessee Code Annotated, Section 33-7-301; or

(3) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to Tennessee Code Annotated, Section 33-7-303.

(b) The agency with jurisdiction shall inform the district attorney of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history; and

(2) Documentation of institutional adjustment and any treatment received.

(c) The agency with jurisdiction, its employees, officials and individuals contracting, appointed or volunteering to perform services hereunder shall be immune from liability for any good-faith conduct under this section.

Section 33-11-105. When it appears that the person presently confined may be a sexually violent predator, the district attorney of the county where the person was convicted or charged or the attorney general and reporter, if required by the district

attorney, may file a petition within forty-five (45) days of the date the district attorney received the written notice by the agency of jurisdiction, as provided in Section 33-11-104(a), alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

Section 33-11-106. Upon filing of a petition under Section 33-11-105, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that person be taken into custody and the person shall be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

Section 33-11-107. Within forty-five (45) days after the filing of a petition pursuant to Section 33-11-105, the court shall conduct a trial to determine whether the person is a sexually violent predator. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under this chapter, such person may retain experts or professional persons to perform an examination on such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The person, the district attorney or attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be

before a jury shall be filed, in writing, at least four (4) days prior to trial. The number and selection of jurors shall be determined as provided in Rule 24 of the Tennessee Rules of Criminal Procedure for a non-capital case. If no demand is made, the trial shall be before the court.

Section 33-11-108. (a) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the commissioner of the department of mental health and mental retardation for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the department of mental health and mental retardation. At all times, persons committed for control, care and treatment by the department of mental health and mental retardation pursuant to this chapter shall be kept in a secure facility and such persons shall be segregated at all times from any other patient under the supervision of the commissioner of the department of mental health and mental retardation and commencing no later than July 1, 1999, such persons committed pursuant to this chapter shall be kept in a facility or building separate from any other patient under the supervision of the commissioner. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(b) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released pursuant to Tennessee Code Annotated, Section 33-7-301, and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine whether the person did

commit the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

Section 33-11-109. Each person committed under this chapter shall have a current examination of the person's mental condition made once every year. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The yearly report shall be provided to the court that committed the person under this chapter. The court shall conduct an annual review of the status of the committed person. Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The commissioner of the department of mental health and mental retardation shall provide the committed person with an annual written notice of the person's right to petition the court for release over the commissioner's objection. The notice shall contain a waiver of rights. The commissioner shall forward the notice and

waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing. If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and will not engage in acts of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The district attorney or the attorney general, if requested by the district attorney, shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence.

Section 33-11-110. The involuntary detention or commitment of persons under this act shall conform to constitutional requirements for care and treatment.

Section 33-11-111. If the commissioner of the department of mental health and mental retardation determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to commit predatory acts of sexual violence if released, the commissioner shall authorize the person to petition the court for release. The petition shall be served upon the court and the district attorney. The court, upon receipt of the petition for release, shall order a hearing within thirty (30) days. The district attorney or the attorney general, if requested by the district attorney, shall

represent the state, and shall have the right to have the petitioner examined by an expert or professional person of such official's choice. The hearing shall be before a jury if demanded by either the petitioner or the district attorney or attorney general. The burden of proof shall be upon the district attorney or attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if discharged is likely to commit predatory acts of sexual violence.

Section 33-11-112. Nothing in this act shall prohibit a person from filing a petition for discharge pursuant to this chapter. However, if a person has previously filed a petition for discharge without the commissioner of the department of mental health and mental retardation's approval and the court determined either upon review of the petition or following a hearing, that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the commissioner's approval, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and, if so, shall deny the petition without a hearing.

Section 33-11-113. The commissioner of the department of mental health and mental retardation shall be responsible for all costs relating to the evaluation and treatment of persons committed to the commissioner's custody under any provision of this act.

Section 33-11-114 In addition to any other information required to be released under this chapter, prior to the release of a person committed under this chapter, the commissioner of the department of mental health and mental retardation shall give

written notice of such release to any victim of the person's activities or crime who is alive and whose address is known to the commissioner or, if the victim is deceased, to the victim's family, if the family's address is known to the commissioner. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this action.

Section 33-11-115. (a) The district attorney shall file a special allegation of sexual motivation within ten (10) days after arraignment in every criminal case other than sex offenses as defined in Tennessee Code Annotated, 39, Chapter 13, Part 15, or Sections 39-17-1004 and 39-17-1005 when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(b) In a criminal case wherein there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury, if it finds the defendant guilty, also shall find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in Tennessee Code Annotated, Title 39, Chapter 13, Part 5 or Sections 39-17-1004 and 39-17-1005.

(c) The district attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decisions or unless there are evidentiary problems which make proving the special allegation doubtful.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon on July 1, 1998, the public welfare requiring it.